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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/847,264

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Lyn Rosenboom

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DORSEY & WHITNEY LLP  
INTELLECTUAL PROPERTY DEPARTMENT  
801 GRAND, SUITE 3900  
DES MOINES, IA 50309

EXAMINER

MCGOWAN, JAMIE LOUISE

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/847,264	<b>Applicant(s)</b> ROSENBOOM, LYN	
	<b>Examiner</b> JAMIE L. MCGOWAN	<b>Art Unit</b> 3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 March 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,6-18 and 20-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2 is/are allowed.
- 6) ☒ Claim(s) 1,6-18 and 20-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claim 15 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. It is unclear from the drawing and the specification what perpendicular extending axle applicant is referring to that allows the bottom tandem arm to pivot in a second plane that is perpendicular to the first plane.

3. Claim 15 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The examiner can not tell by the pictures or the specification how such an axle is attached to the bottom tandem arm and one of the idler wheels to allow for pivoting in a second, perpendicular plane.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –  
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 12-14 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Purcell et al. (3,841,424).

Regarding claim 1, Purcell et al. discloses a track assembly comprising:

- A frame (17) including a tensioning structure (26) adjustably spacing a first wheel (22) a distance from a second wheel (22)
- A top tandem arm (23) pivotally connected to said frame (17) at a pivot member (24) such that said top tandem arm (23) will pivot freely relative to the frame in a substantially vertical plane, said first wheel (22) being directly connected to a first end of the top tandem arm (23) at one end of the frame (17)
- A bottom tandem arm (27) having a front portion, a rear portion, a top portion, and a bottom portion, said bottom tandem arm (27) being pivotally connected to a second end of said top tandem arm (23), said pivot member (24) being positioned between said first end and said second end of said top tandem arm (23)
- A front and a rear tandem arm idler wheel (28) operably connected to the front and back of the bottom tandem arm (27)
- A belt (29) in engagement with the tandem arm idler wheels (28) and said first and second wheels (22)

Regarding claim 12, the first wheel (22) is a large idler wheel.

Regarding claim 13, the front and rear tandem arm idler wheels (22) pivot transversely in a generally vertical plane relative to the bottom tandem arm (27).

Regarding claim 14, Purcell et al. discloses a track assembly comprising:

- A wheel frame (17)

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- A first tandem arm (23) directly connected to an axle (24) positioned in said wheel frame forming a pivot member for rocking generally in a vertical plane about a first pivot axis
- A first wheel (22) positioned at one end of the wheel frame (17) and operably connected to the wheel frame by direct attachment to a first end of said first tandem arm (23) and a second wheel operably connected to said wheel frame (17)
- A continuous ground-engaging belt (29) trained around said first and second wheels (22) and defining an upper run and a lower run, said lower run in contact with the ground
- A first idler wheel (28) structure supported by a second end of the first tandem arm (23), the pivot member (24) being positioned between the first and second ends of the first tandem arm (23), the idler wheel structure being in contact with the lower run between the first and second wheels

Regarding claim 19, Purcell et al. discloses a track assembly comprising:

- A wheel frame (17)
- A pivot arm (23) pivotally attached to said wheel frame at a first pivot axis (24), said pivot arm (23) carrying a first wheel (22) and an idler wheel structure spaced from said first wheel, said pivot axis (24) being positioned above said idler wheel structure such that said axis permits said first wheel (22) and said idler wheel structure to rock about said first pivot axis in a vertical plane, the first wheel being connected to said pivot arm (23) so as to pivot in a direction opposite said idler wheel structure
- A second wheel (22) operably attached to the wheel frame (17)
- A continuous ground-engaging belt (29) trained around said first and second wheels, said idler wheel structure being in contact with said continuous ground-engaging belt (29)

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 6-11 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Purcell et al. (3,841,424) in view of Dow et al. (5,373,909).

Regarding claim 6, Purcell et al. discloses a track assembly comprising:

- A wheel frame (17)
- A first tandem arm (23) directly connected to an axle (24) positioned in said wheel frame forming a pivot member for rocking generally in a vertical plane about a first pivot axis
- A first wheel (22) positioned at one end of the wheel frame (17) and operably connected to the wheel frame by direct attachment to a first end of said first tandem arm (23) and a second wheel operably connected to said wheel frame (17)
- A continuous ground-engaging belt (29) trained around said first and second wheels (22) and defining an upper run and a lower run, said lower run in contact with the ground
- A first idler wheel (28) structure supported by a second end of the first tandem arm (23), the pivot member (24) being positioned between the first and second ends of the first tandem arm (23), the idler wheel structure being in contact with the lower run between the first and second wheels

While Purcell et al. discloses the invention as disclosed above, it fails to disclose that the track assembly could be used to tow an implement. Like Purcell et al., Dow et al. also discloses a track assembly. Unlike Purcell et al., Dow et al. further discloses that the track assembly could have a hitch and be towed behind a working vehicle (Figure 1). It would have been obvious to one of ordinary skill in the art at the time the invention was made that the track assembly of Purcell et al. could be used on either a working vehicle itself or a towed implement as taught by Dow et al. as it would be more practical for the track assembly to have various uses instead of just one use.

Regarding claim 7, the combination of Purcell and Dow discloses that there is a second tandem arm supporting a second idler wheel structure, said second tandem arm pivotally connected to said wheel frame (17) or rocking in a generally vertical plane about a second pivot axis (at second 24) said second idler wheel structure contacting said lower run between said first and second wheels (22).

Regarding claim 8, the combination of Purcell and Dow discloses that the first and second idler wheel structures include a plurality of idler wheels (28).

Regarding claim 9, the combination of Purcell and Dow discloses that the idler wheels are mounted on lower tandem arms (27) pivotally connected to said first and second tandem arms (23).

Regarding claim 10, the combination of Purcell and Dow discloses that the second tandem arm (23) supports said second wheel (22).

Regarding claim 11, the combination of Purcell and Dow discloses that the wheel frame (17) includes a tension bar structure (26) for spacing said first and second wheels (22) and wherein said first and second tandem arms (23) are pivotally connected to said tension bar structure (at 24).

Regarding claim 23, the combination discloses that the first idler wheel structure further comprises a third and fourth wheel, said third and fourth wheel (28) being in contact with said lower run between the first and second wheels.

8. Claims 15, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Purcell et al. (3,841,424) as applied to claims 1 and 14 above, and further in view of Satzler (4,537,267).

Regarding claim 18, Purcell et al. discloses a track assembly comprising:

- A wheel frame (17)
- An arm (23) attached to an axle (24) positioned in said wheel frame (17), said axle comprising a first pivot axis for rocking of said arm (23) generally in a first plane
- A first wheel (22) positioned at one end of the frame and connected to the wheel frame (17) by the first tandem arm (23)
- A second wheel (22) operably connected to the wheel frame (17)
- An idler wheel structure supported by the arm such that the idler wheel structure and the first wheel rock about the first pivot axis in the first plane
- A continuous ground engaging belt (29) trained around the first and second wheels, the idler wheel structure being in contact with the belt

Further, as best understood, regarding claims 15, 17 and 18, while Purcell discloses the invention as described above, it fails to specifically disclose that the idler wheel structure can pivot in a second plane which is perpendicular to the first plane. Like Purcell, Satzler also discloses a track assembly. Unlike Purcell, Satzler further discloses that there is a second, perpendicular pivot pin (34). Satzler teaches that this perpendicular pivot allows the track assembly to adjust when it encounters a raised object on the ground (column 4 line 66 through column 5 line 4). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include



the perpendicular pivot of Satzler in the track assembly of Purcell to allow the assembly to adjust for varying road conditions.

9. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Purcell et al. (3,841,424) in view of Dow et al. (5,373,909) as applied to claim 6 above, and further in view of Satzler (4,537,267).

As best understood, regarding claim 16, while the combination of Purcell and Dow discloses the invention as described above, it fails to specifically disclose that the idler wheel structure can pivot in a second plane which is perpendicular to the first plane. Like the combination of Purcell and Dow, Satzler also discloses a track assembly. Unlike the combination of Purcell and Dow, Satzler further discloses that there is a second, perpendicular pivot pin (34). Satzler teaches that this perpendicular pivot allows the track assembly to adjust when it encounters a raised object on the ground (column 4 line 66 through column 5 line 4). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the perpendicular pivot of Satzler in the track assembly of the combination of Purcell and Dow to allow the assembly to adjust for varying road conditions.

10. Claims 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Purcell et al. (3,841,424) in view of Lykken et al. (6,318,484).

Regarding claim 20, Purcell et al. disclose a track assembly comprising:

- A wheel frame adapted for supporting an implement frame
- A first tandem arm (23) directly connected to an axle positioned in said wheel frame forming a pivot member for rocking generally in a vertical plane about a first pivot axis (24)
- A first wheel (22) positioned at one end of said wheel frame and operably connected to said wheel frame by direct attachment to a first end of said first

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tandem arm (23) and a second wheel (22 – opposite side) operably connected to said wheel frame

- A continuous ground-engaging belt (29) trained around said first and second wheels and defining an upper run and a lower run, said lower run in contact with the ground
- A first idler wheel structure (27) supported by a second end of said first tandem arm (23), the pivot member (24) being positioned between the first end and the second end of the first tandem arm (23) such that said first idler wheel structure (27) and said first wheel (22) rock about said first pivot axis (24) in a reciprocating manner to maintain a desired distribution of weight between said first wheel (22) and said first idler wheel structure (27), said first idler wheel structure (27) further comprising a third wheel (28) connected by a first axle and a fourth wheel (28) connected by a second axle, the first and second axles running through said first idler wheel structure (27), said third and fourth wheels being in contact with the lower run between the first and second wheels

While Purcell discloses the device as described above, it fails to describe an additional wheel on each of the first and second axes. Like Purcell, Lykken et al. also disclose a track assembly for a vehicle. Unlike Purcell et al., Lykken et al. further discloses that the idler axes each have two wheels (i.e. wheel 162 is made up of two wheels on the same axis and wheel 164 is made up of two wheels on the same axis (See Figure 3)). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use two idler wheels on each axis of Purcell as taught by Lykken to balance the idler system by providing a wider base as is known in the art.

Regarding claim 21, the combination discloses that the front tandem arm idler wheel further comprises a third wheel and a fourth wheel connected by a first axle, the rear tandem arm idler wheel further comprising a fifth wheel and sixth wheel connected by a second axle and the third, fourth, fifth, and sixth wheels being in contact with said lower run between the first and second wheels.

11. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Purcell in view of Dow as applied to claims 6 and 7 above, and further in view of Lykken.

While the combination of Purcell and Dow discloses the invention as described above, it fails to describe an additional wheel on each of the first and second axes. Like Purcell and Dow, Lykken et al. also disclose a track assembly for a vehicle. Unlike Purcell et al. and Dow, Lykken et al. further discloses that the idler axes each have two wheels (i.e. wheel 162 is made up of two wheels on the same axis and wheel 164 is made up of two wheels on the same axis (See Figure 3)). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use two idler wheels on each axis of Purcell and Dow as taught by Lykken to balance the idler system by providing a wider base as is known in the art.

#### ***Allowable Subject Matter***

12. Claim 2 is allowed.

#### ***Response to Arguments***

13. Applicant's arguments filed 3/13/2008 have been fully considered but they are not persuasive. Applicant's amendment to include the limitation of freely pivoting/rocking to claims 1, 6, and 14 is not persuasive. While Purcell et al. does disclose compression pads (37) for cushioning, the pads do not prevent the tandem arms from freely pivoting/rocking. The pads simply cushion the tandem arm when it reaches a certain point. As can be seen in Purcell Figure 5, the pad (37) is not being compressed and is therefore not inhibiting the pivoting movement in any way. The tandem arm is therefore freely pivotable/rockable at least at this position. Applicant's remark that, "the compression pads effectively restrict the pivot distance of each crank 23" is more specific than the current claims.

Regarding applicant's remarks concerning the enablement/description rejection of claims 15, it is noted that the examiner is reading the specification/drawings as saying that the roll tube extends between idlers 124B and 124D as seen in Figures 24 and 19B. Claim 15, however, claims that the roll tube/second pivot axis is perpendicular to the lower tandem arm. It appears that the claim should read, "an axle extending parallel ~~perpendicular~~ to said bottom tandem arm and operably connected between said bottom tandem arm and at least one of said idler wheels". If the axle were perpendicular to the tandem arm it would be running in the same direction as the first pivot axis and therefore would not allow the tandem arm to pivot in a second, perpendicular plane. Instead it would allow for additional movement in the same plane.

14. Applicant's arguments against Satzler are also not persuasive. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The fact that Satzler only shows a roll pivot does not change the fact that Purcell, the main reference, teaches the other pivot. Satzler is simply used to show that it is known in the art to use a roll pivot. Adding the roll pivot of Satzler would not cause the other pivot of Purcell to be unnecessary.

### **Conclusion**

15. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMIE L. MCGOWAN whose telephone number is (571)272-5064. The examiner can normally be reached on Monday through Friday 8:00 AM to 5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on (571)272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Thomas B Will/  
Supervisory Patent Examiner  
Art Unit 3671

JLM  
June 17, 2008